

**Fair Political Practices Commission**  
**MEMORANDUM**

**To:** Chairman Randolph, Commissioners Blair, Downey, Huguenin and Remy

**From:** Christopher Espinosa, Executive Fellow  
John Wallace, Assistant General Counsel  
Luisa Menchaca, General Counsel

**Subject:** Prenotice Discussion of Amendments to Regulation 18537 – Contribution Limits and Application to Repaid Loans

**Date:** March 22, 2006

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**I. EXECUTIVE SUMMARY**

This memorandum addresses proposed amendments to regulation 18537 under the Political Reform Act (the “Act”),<sup>1</sup> relating to the term “election cycle,” which is currently featured in all three subdivisions of this regulation. The term “election cycle,” for purposes of this regulation, is not defined. Staff proposes amendments to this regulation in order to add clarifying language reflecting the Commission’s interpretation of section 82015 as applied to contribution limits and repaid loans, and of section 84211 as it relates to the contents of campaign statements.

The Act currently provides that a loan and the forgiveness of a loan are both regarded as campaign contributions. (Sections 82015, 84216, and 85307.) As a result, the loan and the forgiveness of a loan may be counted as two contributions for purposes of contribution limits when, in fact, both constitute only one contribution. Under current law, loans that are forgiven are cumulated with other contributions made during a calendar year for purposes of determining if an individual or entity has qualified as a committee and for reporting purposes.

Regulation 18537 provides a limited exception to this rule for loans subject to the Proposition 34 contribution limits if the forgiveness of the loan is within the same “election cycle” as the original loan. Under such circumstances, the forgiveness of the loan is not considered an additional contribution. However, the term “election cycle,” for purposes of this requirement, is not defined.

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. All references are to the Government Code unless otherwise indicated.

To improve on the current language of regulation 18537, the first proposed regulatory amendment would add a new subdivision to state that this regulation is applicable to the contribution limits of Chapter 5 of this title. This new subdivision is being inserted to clearly state the limitations of this regulation.

The other proposed amendments would delete the obsolete language of “election cycle,” which is in the three current subdivisions of this regulation, and replace it with language that better conforms to current statutes. There are also some technical changes being proposed that seek to make the regulation more consistent with the current language and reporting requirements of the Act.

## II. ISSUES AND BACKGROUND

Under the Act, a “contribution” is any payment made for political purposes without full and adequate consideration. (Section 82015; regulation 18215.) The Act’s definition of “contribution” includes loans made to the candidate or committee, except those received from a commercial lending institution in the regular course of business. (Section 84216.)

Proposition 73 passed in 1988 and placed limitations on campaign contributions, which were calculated on a fiscal year basis, rather than an election cycle basis.

Regulation 18537 was created in 1990 to clarify the treatment of outstanding loans as political contributions. The primary purpose of this regulation, when it was adopted, was to clarify the status of repaid loans under the then-existing fiscal year contribution limits. The initial regulation stated that for the purposes of the fiscal year contribution limits a loan constitutes a contribution in the fiscal year in which it is made and shall be subject to the contribution limits of Chapter 5 of the Act.

This regulation also stated that *the forgiveness of a loan within the same fiscal year* in which it is made shall not constitute an additional contribution for purposes of the contribution limitations.

In late 1990, most of Proposition 73 was found to be unconstitutional by a federal district court in the case of *Service Employees International Union (SEIU) v. FPPC*. This ruling invalidated the fiscal year contribution limits. It did not, however, affect campaign contribution limits set for special elections, since the contribution limits for these elections were calculated on an election cycle and not on a fiscal year basis.

In 1995, this regulation was amended to delete the reference to “a fiscal year basis.” The term “election cycle” was inserted into the regulation since Proposition 73 defined “special election cycle” as the period between the day on which the office becomes vacant and the day of the special election.

In 2000, Proposition 34 was passed, which re-instituted campaign contribution limits on candidates for elective state office on a per election basis. In 2001, regulation 18537 was amended, in the same meeting as 18 other regulations, to update the Government Code references with the Proposition 34 references. The election cycle language related to the special election limits of Proposition 73 was not removed. However, Proposition 34 (at section 85204) defines “election cycle” as “*the period of time commencing 90 days prior to an election and ending on the date of the election*” and expressly limits its application to sections 85309 and 85500, which require state candidates and ballot measure committees to electronically report contributions they receive. Consequently, staff proposes the Commission delete the obsolete term “election cycle” (as used in Proposition 73 special elections) from this regulation, and replace it with language that conforms to changes that were brought about by the passage of Proposition 34.

### III. REGULATORY AMENDMENTS

The first amendment we are proposing is to delete the first sentence in old subdivision (a) and replace it with new language that provides that regulation 18537 is applicable only to loans received or made that are subject to the contribution limits of Chapter 5 of this title. This change is recommended to make explicit in the regulation that which was implicit in the placement of the regulation in Chapter 5, relating to contribution limits.<sup>2</sup> The new proposed subdivision (a) provides:

(a) ~~A loan, other than a loan specified in Government Code section 85307, constitutes a contribution and shall be subject to the contribution limits of Government Code sections 85301, 85302 and 85303.~~ This regulation is applicable to loans received or made that are subject to the contribution limits of Chapter 5 of this title.

The second proposed amendment would move the second sentence in former subdivision (a) to new subdivision (b). The new language indicates that the forgiveness of a loan “*made to a candidate or committee*” (new language) shall not constitute an additional contribution “*from the lender*” (new language) for purposes of the contribution limitations. The new proposed subdivision (b) provides:

(b) ~~Forgiveness of a loan made to a candidate or committee within the same election cycle in which it is made~~ shall not constitute an additional contribution from the lender for purposes of the contribution limitations.

The new language clarifies the entity that received the loan and from whom the additional contributions were obtained. Furthermore, the following obsolete language “*within the same election cycle in which it is made*” has been deleted.

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<sup>2</sup> Generally, reporting of contributions is covered in Chapter 4.

The third proposed amendment — new subdivision (c) — would deal with the repayment of a loan. This section was formerly found in the old subdivision (b). The new proposed subdivision (c) provides:

~~(b)~~ (c) Except as prohibited by Government Code section 85316, repayment ~~Repayment~~ of a loan in whole or in part shall enable the lender, guarantor, endorser, or cosigner to make additional contributions to the same candidate or committee ~~during the same election cycle in which the loan is made~~ provided that the additional contributions, when combined with the outstanding balance of any loan from that contributor, do not result in a violation of the contribution limits.

The obsolete language “*during the same election cycle in which the loan is made*” has been deleted and added in its place is the following language, “*provided that the additional contributions, when combined with the outstanding balance of any loan from that contributor, do not result in a violation of the contribution limits.*” This language is being added to instruct the regulated community that they still have to abide by the existing campaign contribution limitations.

Also added to subdivision (c) is a statement that this subdivision will not supersede the ban on post-election fundraising by state candidates found at section 85316. These changes will make the regulation more consistent with the current reporting requirements of the Act.

The fourth proposed amendment — new subdivision (d) — would deal with how loans received and repaid shall be reported. This language was formerly found in the old subdivision (c) and concerns special reporting rules applicable only to candidates and committees subject to contribution limits. The new proposed subdivision (d) provides:

~~(c)~~ (d) Each loan received shall be reported as a contribution on the campaign report for the reporting period in which it was received regardless of whether it has been retired, forgiven, or remains outstanding in whole or in part. A candidate or committee which has repaid a loan, in whole or in part, and has received an additional contribution from the lender ~~during the election cycle in which the loan was made~~, shall ~~include~~ indicate on the campaign statement ~~for each period in which repayment is made a notation indicating~~ that the cumulative amount of the contributor’s contribution has been reduced accordingly.

Staff has deleted the following outdated language “*during the election cycle in which the loan was made*” and “*for each period in which repayment is made a notation indicating.*” The language “*from the lender*” has been added to specify from whom the additional contribution was obtained. Further, the term “*cumulative*” has been added to

“amount of the contributor’s contribution.”

Current reporting practices now require candidates to report on Form 460 the cumulative amount of contributions (including loans, loan guarantees, monetary and non-monetary contributions) received from the lender during the calendar year. Further, when the cumulative amount of a contribution has been reduced through the repayment of a loan, it is commonly reported in the memo section of electronically filed forms. The amendments made to subdivision (d) will keep the existing reporting requirements intact, but simply eliminate the obsolete reference to the election cycle. It is expected that the new language should clarify any confusion the regulated community had concerning the previous language and make the regulation more consistent with the scheme created by Proposition 34.

#### **IV. STAFF RECOMMENDATION**

Staff proposes noticing amendments to regulation 18537 for adoption at the June 2006 Commission Meeting.

Attachments:

**Attachment 1:** Proposed amendments to regulations 18537